

**REMARKS**

Claims 1-20 are pending in this application. Claims 1 and 5 are the independent claims. Claims 1 and 5 are amended. Reconsideration and allowance of the present application are respectfully requested.

Applicant appreciates the Examiner's acknowledgement and consideration of the drawings filed May 19, 2005.

Applicant appreciates the Examiner's acknowledgement and receipt of the certified priority documents.

**Rejections under 35 U.S.C. §103 – Haamer in view of Snyder**

Claims 1-9, 12-16, 19, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,437,305 ("Haamer") in view of the internet posting titled "Safety of Pasteurized-Chilled Food" by Snyder ("Snyder"). This rejection is respectfully traversed.

With regard to independent claim 1, the Examiner asserts that Haamer discloses all of the claim limitations with the exception that Haamer does not disclose pasteurization, the amount of food in the container, the stiff walls and flexible bottom of the tray, and the thickness of the food contents on the package being thinner at the center. The Examiner asserts that either Snyder discloses these missing limitations, or the missing limitations would have been obvious to a person of ordinary skill in the art viewing Haamer and Snyder.

Applicant asserts that neither Haamer, nor Snyder, either singly or in combination with each other, teach or suggest "placing the food on a tray up to a filling degree of 40-60% of the maximum volume of the tray," as recited in claim 1. The

Examiner asserts that while Haamer does not disclose the amount of food relative to the container size, FIGS. 1A-1E of Haamer show a container that is less than half full and close to the filling degree of the instant application.<sup>1</sup> Applicant submits that Haamer provides **no guidance** pertaining to the “filling degree” of food in a tray. And, more specifically, Haamer does not teach or suggest a filling degree of “40-60% of the maximum volume of the tray,” as recited in claim 1. Rather, Haamer does not address a “filling degree,” at all. Additionally, Applicant submits that there is no indication that FIGS. 1A-1E of Haamer are drawn to scale, and therefore it is not reasonable for the Examiner to use FIGS. 1A-1E of Haamer as a rough guide of sorts, to simply estimate a “filling degree.” Furthermore, Applicant asserts that the Examiner’s assertion that FIGS. 1A-1E show a filling degree of “less than half full”<sup>2</sup> does not teach or suggest a filling degree of “40-60% of the maximum volume of the tray,” as recited in claim 1, as “less than half full” is not “40-60%.” Applicant also asserts that a review of Snyder indicates that Snyder does not remedy this deficiency of Haamer, as Snyder provides no guidance on a “filling degree,” as recited in claim 1.

Applicant further asserts that neither Haamer, nor Snyder, either singly or in combination with each other, teach or suggest “the tray having a flexible bottom and stiff lateral walls extending in the vertical direction of the tray,” as recited in claim 1. The Examiner asserts that Haamer discloses a flexible container but is silent as to the stiffness of the walls. The Examiner further asserts that in FIGS. 1A-1E of Haamer, it can be seen that the walls are stiff enough to withstand the forces of the covering as it is forced by atmospheric pressure to conform to the food. Applicant asserts that Haamer only discloses a “flexible container” made of a material such as plastic. (See

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<sup>1</sup> Page 5 of the current Office Action.

<sup>2</sup> Page 5 of the current Office Action

the Examiner's citations of column 3, line 8, column 2, lines 45-50, and column 3, lines 20-23). For example, in column 2, lines 45-50, Haamer states the following:

"As the container cools, steam therein condenses, whereupon a vacuum arises inside the container. Due to the use of a flexible container, the container molds itself to its contents as the vacuum arises in the container."

In this context, Haamer does not differentiate between the materials of the tray bottom, the tray sides, and the tray's top/covering. In reviewing FIGS. 1A-1E of Haamer, it appears that the "flexible" portion of the container is the tray's top covering (see in particular, the covering of the tray expanding in FIGS. 1C and 1D, and the covering adhering itself to the food and the bottom / side walls of the tray in FIG. 1E). Therefore, Applicant asserts that a full review of Haamer indicates that Haamer does not disclose the combination of a tray with a "flexible bottom" **and** "stiff lateral walls," as recited in claim 1. Applicant asserts that a review of Snyder indicates that Snyder does not remedy this deficiency of Haamer, nor does the Examiner rely on Snyder for this purpose.

Applicant further asserts that neither Haamer, nor Snyder, either singly or in combination with each other, teach or suggest "the flexible bottom being chamfered along the periphery adjacent the lateral walls," as recited in claim 1. Applicant directs the Examiner's attention to FIGS. 1A-1E of Haamer, which only show a flat bottom of a tray with vertical tray sides that are at approximately 90° angles from the tray bottom. Applicant therefore submits that Haamer does not disclose any "chamfering" of the bottom of the tray of Haamer. Applicant further asserts that a review of Snyder indicates that Snyder does not remedy this deficiency of Haamer, nor does the Examiner rely on Snyder for this purpose.

Applicant further asserts that neither Haamer, nor Snyder, either singly or in combination with each other, teach or suggest "closing the valve upon completed pasteurisation of the package and cooling the package, a vacuum being created in the package in such a manner that the package with the vacuum-packaged food therein presents a centre portion where the distance between said flexible cover layer and said bottom is shorter than the distance between said flexible cover layer and said bottom at the peripheral edges of the package," as recited in claim 1. Applicant submits that Haamer does not disclose a tray with a filling degree of 40-60% of the maximum value of the tray, nor does Haamer disclose a tray with a flexible bottom and stiff lateral wall, nor does Haamer disclose a tray that is chamfered along the periphery adjacent the lateral walls. Therefore, Applicant asserts that the tray of Haamer reacts very differently to any heating, pasteurizing and/or cooling of the package during package processing. For this reason, Applicant asserts that Haamer does not disclose a tray where a distance between a flexible cover layer and a bottom of the tray is shorter in the center of the tray than around the periphery of the tray, when the tray contents are under vacuum. Applicant asserts that a review of Snyder indicates that Snyder does not remedy this deficiency of Haamer, nor does the Examiner rely on Snyder for this purpose. For at least these reasons, Applicant asserts that Haamer in view of Snyder does not teach or suggest all of the limitations of claim 1.

With regard to independent claim 5, Applicant asserts that claim 5 contains features similar to claim 1 such that at least the same arguments can be made.

For at least the reasons stated above related to independent claims 1 and 5, Applicant asserts that these claims are patentable. Due at least to the dependence of claims 2-4, 6-9, 12-16, 19, and 20 on the independent claims, Applicant also asserts

that these claims are patentable. Therefore, Applicant respectfully requests that this art ground of rejection of these claims under 35 U.S.C. §103 be withdrawn.

**Rejections under 35 U.S.C. §103 – Haamer in view of Matos**

Claims 10, 11, 17, and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Haamer in view of U.S. Patent 5,780,824 ("Matos"). This rejection is respectfully traversed.

The Examiner uses Matos to disclose the use of a slit shaped vent. With regard to independent claims 1 and 5, Applicant asserts that these claims are patentable over Haamer in view of Snyder for at least the reasons stated above. Applicant asserts that review of Matos indicates that Matos does not remedy the stated deficiencies of Haamer and Snyder, nor does the Examiner rely on Matos for this purpose.

For at least the reasons stated above related to independent claims 1 and 5, Applicant asserts that these claims are patentable. Due at least to the dependence of claims 10, 11, 17 and 18 on the independent claims, Applicant also asserts that these claims are patentable. Therefore, Applicant respectfully requests that this art ground of rejection of these claims under 35 U.S.C. §103 be withdrawn.

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**CONCLUSION**

In view of the above remarks and amendments, Applicant respectfully submits that each of the rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By

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